In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 16241 of 2005

Date of Decision: 7.5.2007

Sarupinder Singh (since deceased) …Petitioner

Versus

Punjab State Electricity Board and another …Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. A.D.S. Jattana, Advocate,
for the petitioner.

Mr. H.S. Sran, Advocate,
for the respondents.

JUDGMENT

M.M. KUMAR, J (Oral)

The instant petition is directed against the order dated 1.8.2005 (P-3), passed by the Engineer-in-Chief, Distribution (West), P.S.E.B., Bhatinda. According to the impugned order two annual increments of the petitioner without future effect have been stopped. It has further been ordered to make recovery from him of an amount of Rs. 15,47,151/-. The aforementioned order has been passed after the reply was filed by the petitioner to the charge sheet dated 4.12.2002. However, it is pertinent to mention that the petitioner died on 25.4.2006 during the pendency of the petition.

Brief facts of the case are that the petitioner joined the service of the Punjab State Electricity Board (for brevity, 'the Board')

on 22.5.1979. On 7.6.1991, the petitioner filed a civil suit in the Court of Civil Judge Ist Class, Muktsar, challenging the charge sheet issued to him. His suit was decreed and the appeal filed by the Board was dismissed by the learned District Judge, Faridkot, vide its judgment and decree dated 10.11.1993 thereby upholding the judgment and decree of the trial Court.

The petitioner was again charge sheeted on 21.4.2004 on the charges that as per Special Audit Report, he had allegedly made refund of Rs. 6,39,158/- secretly to the consumers on Advice No. 81, which could not be recovered because the accounts in question become P.D.C.O. As per the Special Audit Report, the petitioner made a bogus refund of Rs. 9,28,241/- to the consumers un-authorisedly and caused a loss of Rs. 2,10,895/- to the Board as a result of double refund to the consumers. It was further alleged that the petitioner had caused financial loss to the Board by converting tariff of the N.R.Is as Home Tariff and by increasing/decreasing the load. He also did not reply to the letters dated 21.7.2003, 1.9.2003 and 19.8.2003 in connection with the above charges. The Board issued a charge sheet under Regulation 8 of the Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971 (for brevity, 'the Regulations'). The petitioner filed his reply to the charge sheet on 8.10.2004 (P-2) stating that he had already replied to the charges that until he gets the Sundry Register he will not be able to reply to the charges and also stated that the registers were with Shri Manjit Singh, L.D.C. and he himself contacted him to get the

registers but the same were not made available to him on one pretext or the other. The reply, dated 8.10.2004 (P-2) shows that the petitioner had controverted the allegation and contested the charge sheet tooth and nail. After the receipt of the reply of the petitioner, the Board passed the impugned order dated 1.8.2005 (P-3) by observing as under:-

> "Whereas, the employee in his reply to the disciplinary proceedings has not remitted (admitted?) the allegation levelled against him. Whereas, the case of the officials has been considered keeping in view the comments of the field officers and engineer in chief/distribution (West) Bhatinda and he has been held guilty of the charges levelled against him.
>
> Whereas, the engineer in chief/distribution (West) Bhatinda has disposed of the case by holding the held the official guilty and stopping his two annual increments without future effect, besides making of recovery of Rs. 15,47,151/- from him.
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> As per above the stoppage of two annual increments of Shri Sarupinder Singh, UDC Sub-division Arny wala are ordered to be stopped without future effect and of making of recovery from him of Rs. 15,47,151/-.
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> This being issued with the approval of the engineer in chief/distribution (West) Bhatinda."

It is pertinent to mention that the petitioner has died during the pendency of the petition on 25.4.2006 and his legal heirs have been brought on record vide order dated 10.11.2006, passed in C.M. No. 18823 of 2006.

After hearing learned counsel for the parties we are of the view that this petition deserves to be allowed. It may first be pertinent to read Regulation 8(5) and 10 of the Regulations, which are as under:-

"8(5) On receipt of the written statement of defence, the punishing authority may:-

(a) Consider the written statement of defence and, after recording its reasons for so doing, impose on the employee any of the penalties specified in clause (i) to (iv) of Regulation-5:-

OR

(aa) to (c) xxx xxx xxx

xxx xxx xxx"

x x x x x

" 10. (1) Subject to the provision of Regulation 8(5)(a) and sub-regulation (3) of Regulation 9, no order imposing on an employee any of the penalties specified in clauses (i) to (iv) of Regulation 5 shall be made except after:-

(a) informing the employee in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an enquiry in the manner laid down in sub-regulations (3) to (24) of Regulation 8, in every case in which the punishing authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the employee under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each allegation.

(2) The record of the proceedings in such cases shall include:-

(i) a copy of the intimation to the employee of the proposal to take action against him;

(ii) a copy of the statement of allegations delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the findings of the punishing authority and also the report of the inquiring authority in case an inquiry has been held under clause (b) of sub-regulation (1);

(vi) The orders of the case together with the reasons therefore."

A perusal of Regulation 10 of the Regulations shows that no order imposing on an employee any of the minor penalties specified in clauses (i) to (iv) of Regulation 5 could be inflicted except in accordance with the procedure prescribed by sub-regulation 10(1)(a). It is contemplated that an employee is required to be informed in writing of the proposal to take action against him and all allegations on which it is proposed to be taken. He is also to be given a reasonable opportunity of making a representation, which such an employee may wish to make against such a proposal. As per Regulation 8(5), which is referred by Regulation 10(1), on receipt of reply to the charge sheet, after considering the same and recording its reasons in support of the decision, the punishing authority could impose on the employee any of the minor penalties as specified by clause (i) to (iv) of Regulation 5.

At this stage it is appropriate to consider the import of Regulation 5 of the Regulations, which reads as under:-

"5. The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on an employee, namely:-

MINOR PENALTIES

(i) censure;

(ii) withholding of his promotions;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Board by negligence or breach of orders;

(iv) withholding of increments of pay without cumulative effect.

MAJOR PENALTIES

(v) to (ix) xxx xxx xxx

xxx xxx xxx"

A perusal of Regulation 5 makes it abundantly clear that the minor penalties could be inflicted on an employee *'for good and sufficient reasons'* and not otherwise. The question is not *res integra* as the expression *'good and sufficient reasons'* has been interpreted by a number of judgments of this Court including the cases of **Ram Dass Chaudhary v. State of Punjab 1968 SLR 792; State of Punjab v. Dr. Ram Kishan Chopra, ILR (1978) 1 P&H 1;** and **Dr. P.K. Mittal v. State of Punjab, 1982 (3) SLR 222**. The Division Bench in the case of Dr. Ram Kishan Chopra (supra) has opined that mere use of word 'considered' in the impugned order did not fulfil the requirement of the rule which provided for consideration of the reply submitted by an employee. Likewise in Dr. P.K. Mittal's case (supra) this Court has taken the view that an order without disclosing reasons

and application of mind cannot meet the requirement of the rules, which provide for consideration of the reply to the charge sheet submitted by the employee. The view of the learned Single Judge in Dr. P.K. Mittal's case (supra), is discernible from para 2 of the judgment and the same reads as under:-

> "2. The only contention raised by Mr. J.L. Gupta, learned counsel for the petitioner, in support of the petition is that order Annexure P-16 is not a speaking order and that no reasons have been assigned as to why the reply of the petitioner has been rejected. According to him, the order is cryptic and sketchy and could well have been passed without the application of any mind. Reliance has been placed by him on Ram Dass Chaudhary v. State of Punjab and another, 1968 S.L.R. 792, wherein P.C. Jain, J. in somewhat similar circumstances, relying on the decision of the Supreme Court in Bhagat Raja v. Union of India and others, A.I.R. 1967 S.C. 1606, took the view that it was incumbent on a punishing authority to give reasons while arriving at a decision against a delinquent officer as the power of punishing was quasi judicial in nature. The case before P.C. Jain, J. arose from an appellate order of the Government, but here the impugned order is on the original side. In State of Punjab v. Dr. R.K. Chopra, 1978(1) I.L.R. 1 a Division Bench of this Court

approved P.C. Jain, J's view in Ram Dass Chaudhary's case (supra). To my mind, the dictum of Bhagat Raja's case (supra) applies reinforcedly to an order passed by a punishing authority on the original side. It goes without saying that such an order may be subjected to appeal or revision or be tested in writ jurisdiction of this Court. Ex facie, something has to be available on the face of the order from which the Court of correction has to go by. In the instant case, as in plain, the order was that the reply of the petitioner had been considered by the Government and found to be unsatisfactory and, therefore, one increment was thereby stopped with cumulative effect. That per se, to my mind, does not reveal as to how the mind of the Government was applied towards arriving at such a conclusion. Such an order cannot be sustained merely because in the return filed by the Government, effort has been made to justify that it is a speaking order, and it indicates the reasons because of which action was being taken against the petitioner. That may be true, that it indicates the reasons because of which action was being taken against the petitioner. But it does not indicate the reasons for coming to the conclusion for punishing the petitioner. The arena for the respective two spheres is well marked. And though permitted to over-shadow to some extent,

cannot have the effect of superimposition to wipe out the ultimate aspect altogether."

When the principles laid down in the aforementioned judgments are applied to the facts of the present case and the order impugned, it becomes crystal clear that the punishing authority has failed to consider the reply of the petitioner submitted by him in response to the charge sheet. In the first recital of the order, only mention with regard to reply has been made that the petitioner did not admit the allegation levelled against him. There is no other reason given for rejecting the reply and, therefore, the impugned order suffers from the same legal flaw which has been pointed out by this Court in the cases of Ram Dass Chaudhary (supra), Dr. Ram Kishan Chopra (supra) and Dr. P.K. Mittal (supra). Moreover, Regulation 8 (5) of the Regulations use the expression 'consider', which was subject matter of adjudication of this Court in the aforementioned judgments, whereas the impugned order does not show any consideration of the reply submitted by the petitioner. Therefore, the irresistible conclusion is that the impugned order does not disclose any '*good and sufficient reasons*' to record the findings that the petitioner was guilty of the charges as contained in the charge sheet. It is well settled that in cases where the allegations of misconduct are contested by an employee then even for inflicting minor penalty an inquiry may have to be held by following the procedure contemplated by Regulation 8(3) to 8(24) of the Regulations as has been provided by Regulation 10(1)(b) of the Regulations. Therefore, the impugned

order does not meet the requirement of Regulation 8(5) of the Regulations and, thus, the same is liable to be quashed.

In view of the above, the writ petition succeeds. The impugned order dated 1.8.2005 (P-3) is quashed. Consequently, the legal heirs of the petitioner are held entitled to all the benefits. The Board is directed to calculate the same and pay to the legal heirs of Sarupinder Singh (since deceased) within a period of two months from the date a certified copy of the order is received.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

May 7, 2007
Pkapoor

FIT FOR INDEXING